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Supreme Court, U.S.
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No._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 2000

LINDA G. CHAPLAIN, petitioner

v.

CHARLOTTE TIMBER CO., INC., Respondent

PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR SUMMARY REVERSAL TO THE SUPREME COURT OF VIRGINIA AT RICHMOND

PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR SUMMARY REVERSAL

Linda G. Chaplain, pro se
1225 Tanager Trail
Virginia Beach, Virginia 23451
757-491-9130

46pp

QUESTION PRESENTED FOR REVIEW

Whether the Supreme Court of Virginia erred in not granting review of the Circuit Court of Prince Edward County's Orders where Linda G. Chaplain's common law rights, including "clean hands" doctrine protected by the United States Constitution, have been violated?

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the Supreme Court of Virginia at Richmond.

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IN THE SUPREME COURT OF THE UNITED STATES
October Term, 2000

LINDA G. CHAPLAIN, Petitioner

v.

CHARLOTTE TIMBER CO. INC., Respondent

PETITION FOR WRIT OF CERTIORARI AND REQUEST FOR SUMMARY REVERSAL TO THE SUPREME COURT OF VIRGINIA AT RICHMOND

Linda G. Chaplain, the petitioner herein respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Virginia at Richmond entered in the above-entitled case on April 21, 2000 and March 6, 2000.

The March 6, 2000 opinion of the Supreme Court of Virginia whose judgment is herein sought to be reviewed is unpublished record number 992349 reprinted in the separate Appendix H to this Petition pp 35; April 21, 2000 is reprinted in the separate Appendix I to this Petition pp 36; and decision of December 20, 1995 is reprinted in the separate Appendix J to this Petition pp 37.

OPINIONS BELOW

The prior opinions of the Circuit Court of Prince Edward County is unpublished case number CH 93-56 date of decision July 13, 1999 and is reprinted in the separate Appendix A to this Petition pp 15; Decision of August 3, 1999 and is reprinted in the separate Appendix B to this

petition pp 22; Decision of November 18, 1994 and is reprinted in the separate Appendix C to this Petition pp 23; Decision of November 18, 1994 and is reprinted in separate Appendix D to this Petition pp 25; Decision of November 18, 1994 and is reprinted in separate Appendix E to this Petition pp 27; Decision of July 28, 1994 and is reprinted in separate Appendix F to this Petition pp 29; and Decision of September 1, 1995 and is reprinted in Appendix G to this Petition pp 31.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Virginia was entered on April 21, 2000. The jurisdiction of this Court is invoked pursuant to 28 USC section 1257.

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STATEMENT OF CASE

The Trial Court, on November 18, 1994, without objection from and specifically with the consent of opposing counsel ORDERED that:

> "The real estate involved be sold singly or in combination...by advertising the time, place, and terms of sale in the Farmville Herald once a week for four (4) consecutive weeks...and **report to this Court for confirmation or rejection of any offers received either privately or by public action...**" (emphasis added)

After entry of said Order and after bond was posted, but without notice to either the Court, Co-Special Commissioner, or opposing party, Charlotte Timber Co., Inc. (Hereinafter referred to as "Charlotte Timber") purchased the one-fourth interest of each of the three original plaintiffs by Deed dated December 13, 1994.

Tyler E. Williams, III, Esq., counsel to the original complainants and by Court Order then Co-Special Commissioner was aware of said transaction and acted as counsel to the original complainants in said transaction. Co-Special Commissioner J. Warren Tomlin was not informed of the purchase of the complainants' interest until after the Deed was recorded and only upon receipt of the Motion To Intervene. No report or notification was made to the Court in accordance with the Revised Decree Of Sale for confirmation

or rejection of the offer received to purchase singly the interest of each of the three original plaintiffs.

A hearing was held before the Honorable Richard S. Blanton, Judge Circuit Court for the County of Prince Edward on June 8, 1995, on Charlotte Timber's Motion To Intervene and Linda G. Chaplain's (Hereinafter referred to as "Chaplain") objection thereto. The Trial Court granted Charlotte Timber's Motion To Intervene, to which Chaplain objected and excepted, then appealed to the Supreme Court of Virginia who dismissed the Petition, without prejudice, by Order of December 20, 1995. The matter was re-referred to a new Commissioner, to whose report exceptions were sustained, and the Court subsequently appointed its own experts whose determinations of value were objected to and whose calculations were, after entry of a Final Decree Of Partition on July 13, 1999, found to be fatally flawed. Chaplain moved for reconsideration, which said Motion was denied by Order entered August 3, 1999.

Appeal was made to the Supreme Court of Virginia, which denied Chaplain's Petition For Hearing by Order of March 6, 2000 and Petition For Rehearing by Order of April 21, 2000, from which an appeal was made to the United States Supreme Court.

REASONS FOR GRANTING THE WRIT

The Trial Court erred in refusing to invoke the "clean hands" doctrine on behalf of the defendant.

The terms of the Revised Decree of Sale entered by the Trial Court on November 18, 1994 are clear, as are the fiduciary duties and obligations of the Special Commissioners, as per the Code of Virginia. The fact the transaction between Charlotte Timber and the original Complainants occurred after entry of the Revised Decree of

Sale and without notice to Co-Special Commissioner Tomlin and without report to the Court is uncontested. Said sale also occurred **after** bond was posted by the Special Commissioners pursuant to the Order of the Court of November 18, 1994. (see Bond Appendix F)

Only after "consummation" of the "deal" by recordation of a deed was either the Court or the Co-Special Commissioner informed of the transaction. No formal Motion for confirmation of said "private sale" was ever made by the original Petitioners, Charlotte Timber, or Special Commissioner Williams. Thus, not only is the deed to Charlotte Timber void ab initio in that it violates the Decree Of Sale entered November 18, 1994, but, in addition, no "sale" has been confirmed by the Court in accordance with that same Order.

The Order of September 1, 1995, allowing Charlotte Timber to intervene specifically holds, "All previous Orders and Decrees of this Court in this matter,... shall otherwise remain in full force and effect." (Order Allowing Intervention, Prince Edward County Circuit Court, November 18, 1994). This included, but is not limited to the Decree Of Sale dated July 28, 1994 and the Revised Decree Of Sale dated November 18, 1994.

Charlotte Timber (and its predecessors) by deception failed to comply with the Decree Of Sale and Revised Decree Of Sale, and Special Commissioner Williams has circumvented the performance of his duty to the Court, as ordered and bonded, with each participating in this unconscionable bargain designed to deceive Chaplain.

Petitioner Chaplain was subjected to this litigation by the actions of the original Plaintiffs. Those original Plaintiffs sought the benefit of the Court's jurisdiction and relief available through its special statutory authority regarding

partition. Your Petitioner is and was entitled to rely upon the authority and jurisdiction of the Court once the same was imposed. The sale of the property, in direct violation of the existing Court Order, is a fraud upon the Court and Chaplain in that those very persons seeking relief from the Court arbitrarily and intentionally sold their interests in the real property, which they had requested that the Court partition or order sold.

Accordingly, said offer for purchase of the interest of the original Complainants, by the Trial Court's own Decree, had to be reported to the Court for confirmation or rejection as being in the best interest of all the parties. Having failed to comply, the "sale" to Charlotte Timber was/is in violation of the Trial Court's Revised Decree Of Sale and is therefore void.

Charlotte Timber's counsel cannot assert that he was at liberty to act as a private attorney in the purchase-sale transaction while ignoring his duty to the Court as a Special Commissioner. Having been so appointed, he was required to fully comply with the Court's Order. For the original Petitioners to have sought relief from the Court, only to subsequently violate an Order, which granted them the specific, original relief sought, is unconscionable and is a fraud upon the Court and Chaplain.

The Judgment of the Supreme Court of Virginia should be reviewed by this Court because the Commonwealth of Virginia allowed violation of Order in conflict with United States Supreme Courts Decision in Precision Instr. Mfg. Co. v. Automotive M. Mach. Co., 324 U.S. 806 (1944). The Tenth Amendment of the United States Constitution reserves the personal right to have this Court to review this action involving Chaplain's common law right.

Article VI clause 2 of the United States Constitution provides that "this Constitution... shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby..." Absent a Commonwealth of Virginia law to the contrary, the supremacy clause (Articled VI section 2) and other provisions of the Constitution guarantee Chaplains common law civil right. One of the main purposes of this linchpin section of the Constitution is to insure personal common law rights of the individual and specifically regarding these personal common law rights from being eroded or taken away by any judge of any state. The Supreme Court of Virginia and/or the Trial Court has denied Chaplain equal protection of the Tenth, the Fourteenth, Article IV, sections 1 and 2, and Article clause 2 of the Constitution of the United States.

The United States Constitution Article IV section 1 and 2 Article VI clause 2, Amendment 10 and Amendment 14 when applied to equity allows Chaplain the common law right that the equity of a party who was misled is superior to that of the person (or company) who willfully misleads such party.

While the Commonwealth of Virginia does not have a law, the United States District Court N.D. California has defined such in U. S. v. Cannabis Cultivators Club, 5 F. Supp. 2d, 1086, 1104 (N. D. CAL 8) citing Equal Employment Opportunity Comm'n v. Recruit U.S.A. 939 F.2d 746, 752 (9th Cir. 1991):

> The "clean hands" doctrine insists that one who seeks equity must come to the court without blemish...This maxim "is a self-imposed ordinance that closes the doors of a court of equity to one tainted with an inequitableness or bad faith relative to the matter in which he seeks relief, however improper may have been the behavior of the defendant..." This

rule applies to the government as well as to private litigants...

Where the state of Georgia has a current law published in Code of Georgia, Title 23-1-10 as follows: "He who would have equity must do equity and give effect to all equitable rights of the other party respecting the subject matter of the action." See Morgan v. Wright, 219 Georgia 385, 133 S.E. 2d 341 (1963). The "clean hands" decision of the Virginia Trial Court is clearly in conflict with this decision (Morgan v. Wright) where the Supreme Court of Georgia barred equitable relief.

Where the Commonwealth of Virginia has chosen not to publish a law embodying the common law right of "clean hands", Chaplain is protected by the United States Constitution having the right to enforce this common law right; jurisdiction of the equity court will be removed where there has been a violation by the plaintiff.

It is abundantly clear from all sources of common law and statutes that equity is without jurisdiction and will refuse to give any assistance whatever to plaintiff who has "unclean hands".

The Supreme Court of Virginia says in Austin v. Winston, 11 VA. (1 Hen. & M.) 33, 33(1806) it is a maxim at law that " where the parties are equally culpable or criminal the defendant must prevail".

In this case where the state and federal grounds are interwoven with private grounds reserved to the people and the basis for decision is ambiguous as in Michigan v. Long, 463 U.S. 1032 (1983), this Court is compelled to decide the matter by the Tenth and Fourteenth Amendments.

The Constitution allows all common law to be retained by the federal government and by the people absent a law by the state to the contrary. If common law rights are to be taken from the people, there must be a written constitutional statute enacted and published.

Without a decision by this Court, all equity cases tried in the State of Virginia will be questionable where there has been "unclean hands" by plaintiff and all defendant's will be denied this cornerstone doctrine to guarantee protection of constitutional common law right against being forever damaged by "unclean hands".

The Tenth Amendment clearly allows Chaplain to retain the common law "clean hands" doctrine, which she invokes in this case, that he who would have equity must do equity and must give effect to all equitable rights of the other party respecting the subject matter of the action. This common law and rule has never been applied in the Commonwealth of Virginia to the benefit of a defendant of the common law right to retain their property.

Where the Commonwealth of Virginia does not have a constitutional law embodying the "clean hands " doctrine, the Fourteenth Amendment protects Chaplain, a United States citizen under the equal protection of the equity "clean hands" doctrine of common law. In this case where the opposing party (or intervening party) seeks sale of the property, Charlotte Timber (being a land speculator and seller of timber) having violated the Trial Court's Order, and Chaplain has invoked the common law right to retain the property and pay the other parties for their interest, the Trial Court does not have jurisdiction to continue this equitable case over Chaplain's objection.

Where the Trial Court (Judge Snoddy) on July 28, 1994 Ordered "that no one or more of the co-owners is willing to

take an assignment of the real estate and pay the others such sums as their respective interests may entitle them to" (see Appendix F); and this question was ordered reconsidered by Order of the Circuit Court of Prince Edward, September 1, 1995 and Chaplain answered that she was willing to comply with this question; it became the Law of the case. The Judge of the Circuit Court of Prince Edward was without jurisdiction to divide in a manner less than Chaplain testified she would take where Charlotte Timber only wanted to sell.

Where the plaintiff has unclean hands invoked by Chaplain, The Courts of the Commonwealth of Virginia are without jurisdiction to award equity to the plaintiff over Chaplain's objection and exception, nor does the Trial Court have jurisdiction to award property to a plaintiff who sells land over Chaplain's objection when she is willing to buy and pay the plaintiff's their fair share, which is her common law right she invoked; nor jurisdiction, where Chaplain has been damaged by the award (loss of Bond and premium paid, additional attorney fees, error hidden by forester using Doyle lumber rule prices while using International rule measurement, thus causing at least 17 acres of Chaplain's land to be awarded to Charlotte Timber and other objection of record such as road frontage, stream management area, etc.)

Charlotte Timber and/or their predecessors in this case violated the Order and the "clean hands" doctrine that "to receive justice one must do justice".

The United States Supreme Court in Precision Instr. Mfg. Co. v. Automotive M. Mach. Co., 324 U.S. 806,818 (1944) stated "... who are parties to... proceedings have an uncompromising duty to report to it all facts concerning possible fraud or inequitableness underlying the... issue".

Charlotte Timber (and/or the previous plaintiffs) having kept a sinister silence when they should have spoken with candor and courage prior to the transfer of title (and prior to the Trial Courts Order of November 18, 1994, if the defendant had "unclean hands"), equity closes it's door against the plaintiff and leaves them to obtain from a court of law what they can as a reward for their cunning and calculating action.

The Supreme Court of Virginia has published a case referring to "clean hands" in Richards v. Musselman, 221 VA. 181, 267, S.E. 2d 164, 168 (1980) where the Supreme Court of Virginia adopted the reasoning of the Supreme Court of Illinois in Pitzele v. Cohn, 217 Ill. 30, 38-39, 75 N.E. 392, 395 (1905) stating the well settled doctrine "If a plaintiff require any aid from an illegal transaction to establish his demand, he cannot recover it".

The United States Circuit Court of Appeals, Fourth Circuit has stated in Ford, et al. v. Buffalo Eagle Colliery Co., et al. 122 F.2d 555, 563 (1941) regarding the "clean hands" maxim:

> "it is introduced to protect the court of equity and the party defendant from having the powers of the court used in bringing about an inequitable result in the particular litigation before it".

Also, the States Circuit Court of Appeals, Fourth Circuit published in Ford, et. al. v. Buffalo Eagle Colliery Co., et al.122 F.2d, 555, 563 (1941) the West Virginia Rule:

> The clean-hands maxim is sometimes thus stated: "He that hath committed iniquity shall not have equity." Iniquity involves absence of, or deviation from, just dealing. It negatives the existence of uprightness, and means that there has been substituted therefore gross

> injustice, wickedness. Where a litigant's conduct can properly be thus characterized, it is termed unconscionable and, if such conduct has transpired in connection with the immediate subject matter of the suit, equity will close its doors against the party thus tainted. It is said on high authority that any really unconscientious conduct, connected with the immediate controversy, will repel the suitor. 1 Pomeroy's Equity Jur. section 404."

There is a greater significance where real estate inevitably is affected because of the public importance involved. Where Charlotte Timber seeks affirmative relief while being guilty of conduct involving fraud, deceit, unconscionability or bad faith relating to the bonded Order for sale of this property, injures Chaplain and destroys the balance of equities between the litigants, equitable relief shall not be awarded to them. Charlotte Timber (and/or their predecessors) has not displayed that standard of conduct required to the maintenance of this suit in equity.

Chaplain owns a one-fourth undivided minority interest in the real estate and the transfer of three one-fourth undivided interests to one party, Charlotte Timber giving them a majority interest, disturbs the balance of equities between the litigants, thus prejudiced Chaplain's interest. That disparate effect has been readily demonstrated in Charlotte Timber's ability to meet and exceed each of Chaplain's offers to purchase the entire parcel with amounts of only one-third of those required of Chaplain.

Accordingly, having failed to comply with the Court's Revised Decree Of Sale and the result of the purchase being the inherent detriment to Chaplain, the Court should have invoked the "clean hands" doctrine against Charlotte Timber (and/or their predecessors). Charlotte Timber (and/or former Plaintiff's), by their conduct and

words, has manipulated these judicial proceedings in a manner that has worked an injustice to the defendant.

With the trial court an abetter of inequity, this will turn every piece of Virginia real estate into a situation like a corporation where 51% ownership precludes minority rights, jeopardizing the rights of every orphan, infant, widow or others holding a minority real estate interest. There would be no private rights, only a percentage of stock in real estate. The Trial Court decision if allowed to stand, will allow and promote the deception of enough minority parties between the time of the order and the time of the sale to gain control of the real estate.

As in this case where Chaplain has been damaged, Charlotte Timber (being a timber company and speculator), has doubled its value from its cost basis, and/or the amount of money which it tried to force Chaplain to take; in addition, she was not allowed to buy (where she was willing) any portion of the property and pay the plaintiffs their fair share. The balance of equities between the litigants has been substantially and irrevocably damaged.

The "Due Process of Law" provision of the Fourteenth Amendment section 1 assures Chaplain of her right protected by the Bill of Rights, and prevents the Trial Court from balancing the equities between the litigants by awarding or creating civil rights for Charlotte Timber over Chaplain, where no rights are provided in the Constitution for companies. The civil rights protection of the Fourteenth Amendment section 1 protects individual right not only from state but from companies, corporations and other entities, as well.

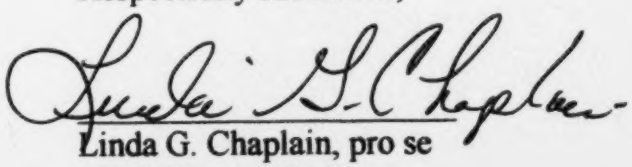
If the Court does not abide by its Order, how can it expect the people or litigants to do so? It must be their quality not their quantity of the Order. Standards must be

enforced to be respected. If they are merely left as something on paper, they might as well be written on water. Otherwise, why have the full faith and credit clause of the Constitution of the United States, Article IV section 1.

CONCLUSION

For the foregoing reasons, the petitioner respectfully prays that its petition for a writ of certiorari and Request for summary referral be granted.

Respectfully submitted,



Linda G. Chaplain, pro se
1225 Tanager Trail
Virginia Beach, Va. 23451

Dated: July 19 2000.

VIRGINIA: IN THE CIRCUIT COURT OF
PRINCE EDWARD COUNTY

HARRY E. DIXON, et als., COMPLAINANTS

v.

TEXON, INC., DEFENDANT

FINAL DECREE OF PARTITION

This day came the parties hereto, Charlotte Timber Co., Inc., the intervening Complainant (hereinafter "Complainant") and Linda G. Chaplain, the intervening Defendant (hereinafter "Defendant"), upon the Commissioner's Report based upon the hearing conducted by the Commissioner in Chancery on April 1, 1996 and the testimony and exhibits introduced at that hearing, upon the Exceptions to the Report of Commissioner filed herein by Complainant, upon Defendant's Exceptions to the Commissioner's Report, upon the testimony and exhibits introduced at that hearing conducted herein on March 6, 1997, upon the letter of this Court to counsel for the parties dated April 21, 1997, upon the Motion by Complainant on June 6, 1997 for appointment of a forestry expert to appraise the timber values upon the property in question, upon the testimony and exhibits introduced at hearing conducted herein on June 20, 11997, upon the Memorandum of Defendant, upon the Complete Appraisal Summary Report... dated October 13, 1997 filed herein by Knight, Dorin & Rountrey (incorporating the survey and timber appraisal services performed by Draper Aden Associates), upon the testimony and exhibits introduced at that hearing conducted herein on February 9, 1998, upon the revision to the aforesaid Complete Appraisal Summary Report... dated June 25, 1998 filed herein by Knight, Doris & Rountrey (incorporating additional survey and timber appraisal

services performed by Draper Aden Associates), upon the Motion in Opposition to the Complete Appraisal Summary Report of Knight, Dorin & Rountrey filed by Defendant, upon the Exceptions to Complete Appraisal Report... filed herein by Complainant, upon the hearing conducted herein on November 16, 1998, and upon the plat of William W. Dickerson, L.S., dated July 30, 1998 and revised November 23, 1998, and was argued by counsel.

And it appearing that the Report of the Commissioner has been filed in the Clerk's Office for more than ten (10) days, and that the Exception to Report of Commissioner filed herein by Complainant and the Defendant's Exceptions to the Commissioner's Report were timely filed, the Court, after careful consideration of the evidence introduced at that hearing and at that hearing conducted on March 6, 1997, is of the opinion that the exception of the Complainant to the Answer to Question No. 1 therein should be and is hereby overruled, and is further of the opinion that the exception of Defendant to the Answer to Question No. 3 of the Commissioner's Report should be and is hereby sustained and the Court would have the Property appraised by its own experts, and is further of the opinion that the exceptions of Defendant to Answer to Question No. 4 of the Commissioner's Report should be and is hereby sustained and the Court finds that the property that is the subject of this suit (hereinafter the "Property"" is susceptible to partition in kind, and is further of the opinion, sua sponte, that the Answer to Question No. 8d of the Commissioner's Report is in error and that the costs and fees claimed by the Commissioner totaling $4,937.44 should be assigned to the parties in the proportion of their respective ownership interest in the Property, that is, Complainant should be and is hereby ordered to pay three fourth (3/4) or $3,703.08, of said charges, and the Defendant should be and is hereby ordered to pay one fourth (1/4) or $1,234.36, of said charges, and the Court is further of the opinion that the remaining objections

of Defendant to the Commissioner's Report should be and are hereby overruled and the Court hereby adopts the remaining findings of said Report of Commissioner not in conflict herewith. The exceptions of Complainant and Defendant to these rulings are noted for the record.

The Court has appointed the firm of Draper Aden Associates to provide survey and timber appraisal services which firm was assisted by Knight, Dorin & Rountrey to provide appraisal services. Upon consideration of the evidence of the qualifications of said firms, the Court is of the opinion that the objections of the parties to the qualifications of Draper Aden Associates and Knight, Dorin & Rountrey to perform survey, timber and appraisal services, and asking for appointment of another forestry consultant to perform such services should be and are hereby overruled. The exceptions of Complainant and Defendant to these rulings are noted for the record.

The Court has considered the Complete Appraisal Summary Report... of Knight, Dorin & Rountrey dated October 13, 1997 as revised by letter dated June 25, 1998 which revised Summary Report incorporates the services of Draper Aden Associates and the objections thereto of the Complainants and the Defendant and the court is of the opinion and does so find that the Property is susceptible to partition in kind, and that the recommendation for the partition in kind contained herein is a fair and equitable partition of the Property and accepts and adopts such recommendation for partition in kind of the Property, and the reports and recommendations contained in said Complete Appraisal Summary Report... should be and are hereby affirmed, ratified and incorporated herein by referenced thereto by the Court as the basis for the partition in kind of the Property, and further finds that the value of the Property is $848,000.00, and the objections thereto of the parties should be and are hereby overruled. The exceptions of

Complainant and Defendant to these rulings are noted for the record.

The Court accepts, over Defendant's objection, the aforesaid plat of survey of William W. Dickerson, L.S., as the basis for the partition in kind to be ordered herein.

Now, therefore, it is ADJUDGED, ORDERED and DECREED, pursuant to section 8.01-88 of the Code of Virginia, 1950, as amended, and to confirm the aforesaid partition in kind, that Complainant, Charlotte Timber Co., Inc., shall be allotted as its share of the Property, free and clear of any further claims therein of the Defendant, Linda G. Chaplain, her predecessors in interest and all who claim through her, the following described property, to-wit:

> **TRACT 1:** All that certain tract or parcel of land, lying and being in Buffalo Magisterial District, Prince Edward County, Virginia and containing 70.70 acres according to that plat of survey of William W. Dickerson, Jr., L.S., dated July 30, 1998 and revised November 23, 1998 which plat is attached hereto and, by reference, is made a part hereof for a more particular description of this tract by metes and bounds.
>
> **TRACT 2:** All that certain tract or parcel of land, lying and being in Buffalo Magisterial District, Prince Edward County, Virginia and containing 224.53 acres according to the aforesaid plat of survey of William W. Dickerson, Jr., L.S., which plat is attached hereto and, by reference, is made a part hereof for a more particular description of this tract by metes and bounds.
>
> **TRACT 3:** All That certain tract or parcel of land, lying and being in Buffalo Magisterial District, Prince Edward County, Virginia and containing 98.09 acres according to the aforesaid plat of survey

of William W. Dickerson, Jr., L.S., which plat is attached hereto and, by reference, is made a part hereof for a more particular description of this tract by metes and bounds.

Tracts 1, 2 and 3, herein, are a portion of that property conveyed unto Harry E. Dixon, William H. Dixon, Dwight A. Dixon and Jo D. Andrews from G. A. Dixon and Clara L. Dixon by Deed dated October 13, 1969 and recorded in the Clerk's Office for this Court in Deed Book 171 at page 764.

And, it ADJUDGED, ORDERED and DECREED, pursuant to section 8.01-88 of the Norfolk and Western Railway and lands now or formerly owned by Edward T. Wilson and Olivia L. Wilson, on the southerly side by lands now or formerly owned by William C. Moore, W. Scott, R. J. Neely, the old Worsham Place and others, and being the remaining portions of three parcels of land containing in the aggregate 685.81 acres conveyed to G.A. Dixon by deeds from D. W. Long and wife date March 29, 1943, recorded in Deed Book 99, page 334 (a quitclaim deed to the same parcel having been executed by Reece F. Longsworth and others dated February 6, 1953, recorded in Deed Book 158, page 625), and from Reece F. Longsworth et al, dated August 26, 1950, recorded in Deed Book 116, page 122, after of-conveyances by the parties of the first part by the following deeds: (1) 1 acre to David Morton and Fannie Morton, dated October 2, 1950, recorded in Deed Book 116, page 418; (2) 2 acres to W. M. Morton dated December 12, 1955, recorded in Deed Book 130, page 68; (3) 2 acres to John A. Hudson and Mildred G. Hudson dated December 12, 1955, recorded in Deed Book 130, page 70; (4) 29.5 acres to Fannie Styles Reid dated November 12, 1958, recorded in Deed Book 139, page 247; and (5) 111 acres to P. E. Welch dated January 27, 1951, recorded in Deed Book 117, page 124.

SAVE AND EXCEPT three parcels containing 70.70 acres, 224.54 acres and 98.09 acres allotted this day to Charlotte Timber Co., Inc. by this Decree of Partition.

It is further ORDERED that the Clerk of this Court shall spread this Decree of Partition upon the Deed Books maintained in the Clerk's Office for this Court and index this Decree in the names of the Complainant and the Defendant as to the allotments made hereby.

And it further appears to the Court that the real property taxes upon the Property have been paid through 1998, and that the bill of Donald C. Blessing as Commissioner in Chancery has been paid in full.

And it further appearing to the Court that a Memorandum of Lis Pendens has been filed herein by the Complainant, that the names of the interested parties are as listed on said Memorandum, that the issues of this suit have been fully completed, it is further ORDERED and DECREED, pursuant to section 8.01-16y9 of Code of Virginia, 1950, as amended, that the Clerk of this Court shall release said Memorandum of Lis Pendens but shall not do so until after the expiration of the time in which an appeal or writ of error may be applied for, or, if an appeal or writ of error is applied for by either or both parties, after final judgment or decree is entered by the appropriate appellate court.

ENTERED: "s/_____
Judge

DATE: 7/13/99

Seen and objected to:

"s/_____, p.q.
Tyler E. Williams, III
Attorney for Intervening Complainant

Seen and objected to:

"s/_____, p.d.
Warren Tomlin
Attorney for Intervening Defendant.

A copy of Order recorded in Chancery Order Book 24 at page 485.

Teste: "s/_____, Clerk
By: "s/_____, D.C.

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE EDWARD COUNTY

Harry E. Dixon, et als,
Complainants

v. In CH#: 93-56

Texon, Inc.,
Defendant

DECREE

The Court having considered the defendant's Motion for Reconsideration and To Set Aside A Portion of the Final Decree of Partition, the Court hereby denies the request.

Endorsement of counsel is dispensed with pursuant to Rule 1:13 of the Rules of the Supreme Court of Virginia.

Enter: 8/3/99

"s/Richard S. Blanton
Judge

A copy of Order recorded in
Chancery Order Book 24 at page 512.
Teste:
"s/Frank L. Overton, Clerk

By: "s/Earlma R. Blessing, D.C.

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE EDWARD COUNTY

HARRY E. DIXON, et als.,
Complainants

v.

TEXON, INC.,
Defendant

ORDER

THIS CAUSE came on this day upon the Motion to Intervene of Linda G. Chaplain, by counsel, who requested leave of this Honorable Court to intervene in the above-styled matter, pursuant to the Decree of Sale entered herein on July 28, 1994, and upon other papers filed herein, and was argued by counsel.

UPON CONSIDERATION WHEREOF, it appearing to the Court that a one-fourth interest in the real property which is the subject of this litigation was conveyed to Petitioner by Deed from Defendant, Texon, Inc. dated April 17, 1992 and recorded in the Clerk's Office of the Circuit Court of Prince Edward County in Deed Book 222 at page 425;

AND IT FURTHER APPEARING that Petitioner has a claim germane to the subject matter of the suit given her ownership of a significant interest in the real property which is the subject of this suit, which said property is subject to sale by Special Commissioner's pursuant to ORDER of this Honorable Court consistent with the Report of the Commissioner in Chancery;

BE IT THEREFORE ADJUDGED, ORDERED, AND DECREED that the Motion to Intervene be and hereby is GRANTED.

ENTER:"s/J. Snoddy, Judge"
DATE: November 18, 1994

I ASK FOR THIS:
"s/J.W. Tomlin, p.d.

SEEN:
"s/Tyler Williams, p.q.

A copy of Order recorded in Chancery Order Book 22 at page 646.
Teste:
"s/Frank L Overton, Clerk
By:"s/Earlma R. Blessing, D.C.

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE EDWARD COUNTY

HARRY E. DIXON, et als.,
Complainants

v.

TEXON, INC., and LINDA G. CHAFLAIN,
Defendant

ORDER

THIS CAUSE came on this day upon the Motion of Tomlin and Thomas, P.C., to be substituted as Counsel of Record for Defendants, Texon, Inc., and Linda G. Chaplain, herein, in the above-styled action and upon the Motion of Defendant, by counsel, that J. Warren Tomlin, Esquire, be appointed Co-Special Commissioner in the place and stead of Dannie R. Sutton, Jr., pursuant to the Decree of Sale entered herein on July 28, 1994, and upon other papers filed herein, and was argued by Counsel.

UPON CONSIDERATION WHHEREOF, it appearing to the Court that subsequent to July 28, 1994, the date of entry of a Decree of Sale herein, Dannie R. Sutton, Jr., expressed his desire not to serve as Co-Special Commissioner pursuant to the terms of said Decree,

AND IT FURTHER APPEARING that Defendant, Linda G. Chaplain, was allowed to intervene this matter for good cause shown;

AND IT FURTHER APPEARING that Defendants, Texon, Inc., and Linda G. Chaplain, have requested the law firm of Tomlin and Thomas, P.C., to represent the Defendants herein,

AND IT FURTHER APPEARING that Defendants Texon, Inc., and Linda G. Chaplain, have requested that J. Warren Tomlin, Esquire, act as Co-Special Commissioner, in the place and stead of Dannie R. Sutton, Jr., with Tyler E. Williams, III, pursuant to said Decree;

BE IT THEREFORE ADJUDGED, ORDERED, AND DECREED that the Motion for Substitution of Counsel and Co-Special Commissioner be, and hereby is, GRANTED.

ENTER "s/_____
JUDGE
DATE November 18, 1994

We Ask for This:
"s/ J. Warren Tomlin, p.d.

Seen and Agreed:
"s/ Tyler E. Williams, III, p.q.

A TRUE COPY TESTE:
"s/Frank L. Overton CLERK
By"s/E.R. Blessing D.C.

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE EDWARD COUNTY

HARRY E. DIXON, et als.,
Complainants

v.

TEXON, INC.,
Defendant

REVISED DECREE OF SALE

This cause came on this day upon the Decree of Sale entered herein dated July 28, 1994 and recorded in the Clerk's Office for this Court in Chancery Order Book 22 at page 568, upon the representation by Dannie R. Sutton, Jr. that he does not wish to serve herein a Special Commissioner, upon the motion of Defendant, by counsel, to appointing J. Warren Tomlin to serve as co-Special Commissioner in the place and stead of said Dannie R. Sutton, Jr., and upon the other papers filed herein, and was argued by counsel.

Upon consideration whereof, it appearing to the Court proper to do so

It is ADJUDGED, ORDERED and DECREED that the motion to appoint said J. Warren Tomlin to serve as co-Special Commissioner with Tyler E. Williams, III is granted.

It is further ADJUDGED, ORDERED and DECREED that the real estate involved be sold singly on in combination, and that J. Warren Tomlin and Tyler E. Williams, III be and are hereby appointed co-Special Commissioners to solicit bids for said real estate, in

accordance with the recommendations set forth in the report of Commissioner Elizabeth Taylor Carter, by advertising the time, place and terms of sale in the Farmville Herald once a week for four (4) consecutive weeks on the following terms: 10% in cash at the day of sale with balance within thirty (30) days, and report to this Court for confirmation or rejection any offers received either privately or by public auction, but before the said co-Special Commissioners shall act under this Decree, they shall execute bond, with surety, in the penalty of Four Hundred Fifty Five Thousand Eight Hundred Thirty Three Dollars ($455,833.0) before the Clerk of this Court and, thereafter, the said co-Special Commissioners shall report to the Court herein. All other findings, ratifications, approvals and confirmations contained in the aforesaid Decree of Sale not explicitly changed, revised or amended herein shall remain in full force and effect.

ENTER: "s/_____
JUDGE
DATE: November 18, 1994

We ask for this:

"s/Tyler E. Williams, III
Tyler E. Williams, III

"s/J. Warren Tomlin
J. Warren Tomlin, Esq.
Counsel for Defendant

A TRUE COPY TESTE:
"s/Frank L. Overton, CLERK
By "s/E.R. Blessing, D.C.

VIRGINIA: IN THE CIRCUIT COURT OF PRINCE EDWARD COUNTY

HARRY E. DIXON, et als., COMPLAINANTS

v.

TEXON, INC., DEFENDANT

DECREE OF SALE

This cause came on this day upon the Report of the Commissioner, Elizabeth Taylor Carter, Esq., filed June 28, 1994 and the exhibits thereto, and the depositions taken and filed on behalf of Complainants, and was argued by counsel.

Upon consideration whereof, it appearing to the Court that the Report of Commissioner Elizabeth Taylor Carter has been filed for a period of more than ten (10) days and no exceptions have been filed thereto, and no exceptions have been filed and no just ground for exceptions being perceived, said report is accordingly ratified, approved and confirmed in all respects.

And it further appearing to the Court that all of the parties interested in said real estate are properly before the Court and that partition among the owners thereof cannot conveniently be made and that no one or more of the co-owners is willing to take an assignment of the real estate and pay the others such sums as their respective interests may entitle them to, and that the interests of those entitled to said real estate or its proceeds will be promoted by a sale of all of said real estate and a division of the proceeds among them, according to their respective rights and interests contained in the aforementioned report,

It is therefore ADJUDGED, ORDERED and DECREED that the real estate involved be sold singly or in combination, And that Tyler E. Williams, III and Dannie R. Sutton, Jr. be and they are hereby appointed Special Commissioner to solicit bids for said real estate, in accordance with the recommendations set forth in the report of Commissioner Elizabeth Taylor Carter, by advertising the time, place and terms of sale in the Farmville Herald once a week for four (4) Consecutive weeks on the following terms: 10% in cash at the day of sale with balance within fifteen (15) days, and report to this Court for confirmation or rejection any offers received either privately or by public auction, but before the said Special Commissioners shall act under this Decree, they shall execute bond, with surety, in the penalty of Four Hundred Thousand Eight Hundred Thirty Three Dollars ($455,833.00) before the Clerk of this Court and, thereafter, the said Special Commissioners shall report to the Court herein.

ENTER: "s/_____
JUDGE
DATE: July 28, 1994

Seen:

"s/_____
Tyler E. Williams, III
Counsel for Complainants

"s/_____
Dannie R. Sutton, Jr.
Counsel for Defendant

A TRUE COPY TESTE:
"/ Frank L. Overton , Clerk
By/ "s E. R. Blessing, D.C.

VIRGINIA: IN THE CIRCUIT COURT OF
PRINCE EDWARD COUNTY

HARRY E. DIXON, et als., COMPLAINANTS

v.

TEXON, INC., DEFENDANT

ORDER

THIS CAUSE came on this 8th day of June, 1995, upon the Petition of Charlotte Timber Company, Incl., by counsel, to intervene in the above-styled matter and Petitioner's Motion to Allot, Defendant's Third Amended Motion in Opposition to Petitioner's Motion to Intervene, Defendant's Motion in Opposition to Petitioner's Motion to Allot, Defendant's Motion to Dismiss, Defendant's Motion to Allot, Defendant's Motion for Reconsideration of the Revised Decree of Sale, and other papers filed herein, and was argued by counsel.

IT APPEARING to the Court that Petitioner seeks to assert a claim germane to the subject matter of this suit and it further appearing proper to the Court to do so;

Now, therefore, it is ADJUDGED, ORDERED, and DECREED that the Motion to Intervene filed herein by the Petitioner should be and is hereby GRANTED; that Defendants Third Amended Motion in Opposition to Petitioner's Motion to intervene and Defendant's Motion to Dismiss should be and are hereby DENIED:

AND IT FURTHER APPEARING that offers equivalent in value from the Intervening Defendant and the Petitioner (now intervening Complainant) to purchase the interest of the

other are before the Court, that neither offer should be preferred over the other and it appearing proper to do so;

Now, therefore, it is ADJUDGED, ORDERED, and DECREED that neither the intervening Defendant nor the Petitioner (now intervening Plaintiff) are entitled to allotment and therefore the Motion to Allot of each party should be and is here by DENIED;

AND IT FURTHER APPEARING to the Court that some of the evidence upon which the Report of the Commissioner was based may have changed since the hearing before said Commissioner which was conducted on April 18, 1994 such that the Court desires that some of the findings contained in said Report be updated, Defendant's Motion for Reconsideration of the Revised Decree of Sale entered by this honorable Court on November 18, 1994 is hereby GRANTED, and it is hereby ADJUDGED, ORDERED and DECREED that this cause be and it is hereby referred to Donald C. Blessing, Commissioner in Chancery of this court, who after giving due notice of the time and place for executing this reference as required by law, shall inquire, take evidence, and report, as follows:

1. Henceforth from April 18, 1994, the date of the Hearing of the initial Commissioner in Chancery in this matter, who are the record owners of, and in what proportions does each own, the real property described in this matter?
2. What is the present tax status of the real property, are any said taxes delinquent, and if so, in what amount and to what extent, and are there any liens of record on said real property, and if so, their amounts and (t)he order of their priority?

3. What is the fair market value of the fee simple and what, if any, is the annual rental value of said real property?

4. Whether the real property is susceptible of partition in kind between/among the parties entitled thereto?

5. If the answer to inquiry number four (4) herein is negative, then, whether either/any of the owners is/are willing to take the whole or any part of the real property and pay the other owner(s) such sums of money as their respective interest(s) may entitle them to?

6. If the answer to inquiry number five (5) herein is negative, then, whether the interest of those entitled to said real property or the proceeds therefrom would be promoted by the sale of said real estate and division of the proceeds?

7. If the answer to inquiry number six (6) herein is affirmative, then, whether the parties are properly before the Court in this cause and whether this Court may enter any decree or order affecting a sale of the real property? And,

8. Any land all other matters deemed pertinent to this matter by said Commissioner in Chancery and such pertinent matters concerning which said Commissioner is required to report by any party in interest.

AND BE IT FURTHER ADJUDGED, ORDERED, and DECREED that said Commissioner in Chancery shall make his/her report to this honorable Court, and that all previous Orders and Decrees of this Court in this matter not otherwise

modified herein shall otherwise remain in full force and effect, and this matter shall remain on the docket.

ENTER: "s/_____
JUDGE

DATE:9/1/95

I ask for this:

"s/Tyler E. Williams, III, p.d.

Seen and objected to for reasons stated on the record:

"s/J. Warren Tomlin, p.q.

A copy of Order recorded in
Chancery Order Book 22 at page
892.
Teste:
"s/Frank L. Overton, Clerk
By: "s/Earlma R. Blessing, D.C.

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 6th day of March, 2000.

Linda G. Chaplain. Appellant,

against Record No. 992349
Circuit Court No. CH93-56

Charlotte Timber Co. Inc., Appellee.

From the Circuit Court of Prince Edward County

Upon review of the record in this case and consideration of the argument submitted in support of and in opposition to the granting of an appeal, the Court is of opinion there is no reversible error in the judgment complained of. Accordingly, the Court refuses the petition for appeal.

A Copy,
Teste,

David B. Beach, Clerk

By: "s/_____
Deputy Clerk

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 21st day of April, 2000.

Linda G. Chaplain, Appellant,

against Record No. 992349
Circuit Court No. CH93-56

Charlotte Timber Co., Inc., Appellee.

Upon a Petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 6th day of March, 2000 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

"s/_____
Clerk

Corrected Copy

VIRGINIA;

In The Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 20th day of December, 1995.

Linda G. Chaplain, Intervenor, etc., Appellant,

against Record No. 952109
Circuit Court No. CH93-56

Charlotte Timber Company, Inc., etc., et al., Appellees.

From the Circuit Court of Prince Edward County

Finding that the order appealed from is not a final order under Code section 8.01-670(A) (3), the Court dismisses without prejudice the petition for appeal filed in the above-styled case.

A Copy,

Teste:
David B. Beach, Clerk

By: "s/_____
Deputy Clerk

I. CONSTITUTIONAL PROVISIONS STATUTES, RULES AND REGULATIONS.

Constitution of the United States.

Article IV. Relation of the states to each other.

Section 1. Full faith and credit shall be given in each state to the public Acts, Records, and judicial Proceedings of every other state; And the Congress may by general laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the effects thereof.

Section 2. (1) The Citizens of each state shall be entitled to all Privileges and Immunities of Citizens in several States.

Article VI, clause 2. Supremacy of the national government.

This Constitution, and the laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

Amendment 10. Powers retained by the states and the people.

The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

Amendment 14. Civil Rights

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the

privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. section 1257. State courts; certiorari.

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Code of Georgia. Title 23-1-10. Who would have equity must do equity.

He who would have equity must do equity and give effect to all equitable rights of the other party respecting the subject matter of the action.

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KNOW ALL MEN by THESE PRESENTS, That we, J. Warren Tomlin and Tyler E. Williams, III and Fidelity and Deposit of Maryland are held and firmly bound unto the Commonwealth of Virginia in the sum of --- Four Hundred Fifty-Five Thousand Eight Hundred Thirty-three & .00/0 To the payment whereof, well and truly to be made to the said Commonwealth of Virginia, we bind ourselves, and each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. And as to this bond, we hereby severally waive our homestead exemption.

In Testimony Whereof, we hereunto subscribe our name and affix our seal this, the 21st day of November, 1994.

The Condition Of The Above Obligation Is Such, That whereas, the above bound ------J. Warren Tomlin and Tyler E. Williams, III----was by Order of the Circuit Court of Prince Edward County, Virginia, appointed Co-Special to sell privately or by public auction real estate in the chancery case now before this Court under the style of HARRY E. DIXON, ET ALS Vs. TEXON, INC..

SEE CHANCERY ORDER BOOK 22 PAGE 650

Now, therefore, If the said J. Warren Tomlin & Tyler E. Williams, III as aforesaid, shall faithfully discharge the duties of the office, post or trust of Co-Special Commissioners then this obligation to be void; otherwise to remain in full force and virtue.

"s/_____(SEAL)
J. Warren Tomlin

"s/_____(SEAL)
Tyler E. Williams, III

Fidelity and Deposit Company of Maryland
By: "s/_____(SEAL)
Peggy W. Newcomb

VIRGINIA:

In the Clerk's Office of the Circuit Court for the County of Prince Edward the 21st day of November, 1994.

This bond was executed and acknowledged by the obligors, and ordered to be recorded.

SURETY ACCORDING THE CHANCERY ORDER
(COB 22 PAGE 650)

Teste:
"s/_____
Earlma R. Blessing D. Clerk

COPY 80